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# Facsimile Cover Sheet

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**Date:** 6/16/98 12:30pm  
**Pages including this  
cover page:** 4

## Comments:

**Ms. Sutton:**

Melanie Pallman informed me that the EPA is looking into the St. Louis Tunnel discharge issue. I enclose for your information a copy of a letter I sent to Geg Brand of the Colorado Dept of Public Health and Environment.

Please call if you need any further information.

Jack Duksin

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Via Federal Express

August 26, 1997

Gregory N. Brand, District Engineer  
Colorado Department of Public  
Health & Environment  
P.O. Box 140  
Durango, CO 81302

Re: St. Louis Tunnel (near Rico CO) etc.

Dear Mr. Brand:

I am the attorney for Rico Properties Limited Liability Company (hereinafter "Rprop") and Rico Renaissance Limited Liability Company (hereinafter "Rren"), both of which have asked me to respond to your letter of August 21, 1997. (Rprop and Rren are two independently owned (with wholly different owners) unrelated Colorado Limited Liability Companies. The only relationship between the two is that Rren has the contractual right to purchase certain land from Rprop, and/or cause Rprop to convey certain land to third parties.)

It is important to note at the outset that at no time did Rico Development Corporation ("RDC") (owned by Wayne Webster, Virginia Sell and, possibly, David Sell (Virginia Sell's son), Rprop or Rren intend that Rprop or Rren acquire any land or liability associated with any environmental issues associated with the St. Louis Settling Pond System, Outfall 002, Outfall 001, the wastewater treatment facility, the St. Louis Tunnel or the Blaine Tunnel. At no time was the Colorado Wastewater Discharge Permit #CO-0029793 ever transferred from RDC to Rprop or Rren, nor was it ever intended to be transferred. Also, Rprop or Rren never owned or had the right to acquire the St. Louis Settling Pond System, Outfall 002, Outfall 001, the wastewater treatment facility, the St. Louis Tunnel (except for the mistake relating to the St. Louis Tunnel portal, that was corrected on February 21, 1997) or the Blaine Tunnel, or any environmental liability associated therewith, including Colorado Wastewater Discharge Permit # CO-0029793.

The facts are as follows:

On December 22, 1993 a contract (hereinafter the "Russcor Contract") between Russcor Financial Inc. and Rico Development Corporation (hereinafter RDC) was executed

*potentially* covering the purchase of all of the subject land, including the St. Louis Settling Pond System, Outfall 002, Outfall 001, the wastewater treatment facility, the St. Louis Tunnel and the Blaine Tunnel. However, Paragraph 3 of Exhibit C of that contract allowed the purchaser in its sole and absolute discretion to exclude any of the subject land. (Copies of all referenced documents are enclosed and marked for you convenience.)

On March 15, 1994 the contract was assigned by Russcor Financial, Inc., as purchaser, to the then future owner/members of Rprop. (Ownership of Rprop has since changed on a number of occasions.) On March 14, 1994 a Second Addendum to the December 22, 1993 contract was executed. (The First addendum merely extended the deadlines in the contract.)

The Second Addendum transformed the contract from the potential outright purchase of all the land to an outright purchase of only a very limited portion of the land (with respect to which there clearly was no environmental liability issues), and a five year option to purchase, or to cause RDC to convey, certain other lands (with respect to which there was a possibility of environmental liability issues). So, the bulk of the property that was originally covered under the Russcor Contract was now converted to an option. The option specifically *excluded* the St. Louis Settling Pond System, Outfall 002, Outfall 001, the wastewater treatment facility, the St. Louis Tunnel (except for the mistake relating to the St. Louis Tunnel portal, that was corrected on February 21, 1997) or the Blaine Tunnel, as well as other land which the purchaser believed had environmental liability attached to it. This was done pursuant to our environmental attorney's advice. Rprop was, at its own expense, undertaking a Phase I and Phase II Environmental Assessment to determine which of the optioned property could be acquired without environmental liability. Once again, it was never intended by RDC or Rprop that Rprop acquire any environmental liability associated or related to any of the RDC owned land.

At the time the Second Addendum/Option was executed, the parties were working off old and often partially illegible mining claim maps. We believed that we excluded from the option agreement *all* lands associated with the St. Louis Settling Pond System, Outfall 002, Outfall 001, the wastewater treatment facility, the St. Louis Tunnel and the Blaine Tunnel, as well as other land which the purchaser believed had environmental liability attached to it. We believed that the St. Louis Tunnel portal and the wastewater treatment facility were located entirely on that portion of the Homestake and Little Cora Consolidated Placer located *East* of the Dolores River. Accordingly, only that portion of the Homestake and Little Cora Consolidated Placer located *west* of the Dolores River was included in the land subject to our option.

On November 14, 1994, Rprop exercised its option to acquire most of the land under option with RDC, again excluding those lands with respect to which Rprop had environmental concerns. As more research was done, land that was determined to be relatively free of environmental liability was acquired by Rprop, pursuant to the further exercise of its option.

*However, on or about December, 1996, Wayne Webster apparently discovered that a portion of the wastewater treatment plant, and the St. Louis Tunnel Portal sat on a portion of*

*the Martha Lode, which portion of the Martha Lode had on November 14, 1994, been deeded in error to Rprop pursuant to the option. Again, the parties erroneously believed that the St. Louis Tunnel portal and wastewater treatment plant sat entirely on that portion of the Homestake and Little Cora that had been deleted from the Option Agreement and was never transferred to Rprop, but was retained by RDC. Rprop got wind of this shortly thereafter and arranged as soon as possible (there was heavy snow coverage) to have the property surveyed. A correction deed was then promptly recorded on February 21, 1997, conveying back to RDC the land associated with the portion of the wastewater treatment plant, and the St. Louis Tunnel Portal that was erroneously acquired on November 14, 1994. **At no time did Rprop (or Rren) ever exercise any dominion, control, authority or any other indicia of ownership or environmental responsibility with respect to the wastewater treatment plant or the St. Louis Tunnel Portal, or any other property listed in your letter. On the contrary, RDC maintained and operated the wastewater treatment plant and the St. Louis Tunnel Portal at all times up until approximately December, 1996, when Mr. Webster apparently discovered the error in conveyance and apparently figured he could shift liability to Rprop.***

I have tried to give a complete response to your letter of August 21, 1997, but recognize that there may be some additional facts to present as the matter unfolds and additional questions arise. I will promptly pass any such additional facts on to you.

Sincerely,

M. Jack Duxsin